

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:)	Group Art Unit: 2191
Kevin D. Galloway, et al.)	Examiner: Phillip H. Nguyen
Application No.: 10/807,623)	IBM Corporation
Filed: March 24, 2004)	Intellectual Property Law
Title: METHOD AND PROGRAM)	Department SHCB/040-3
PRODUCT FOR COSTING AND PLANNING)	1701 North Street
THE RE-HOSTING OF COMPUTER-BASED)	Endicott, NY 13760
APPLICATIONS)	Appeal No.:
)	Confirmation No.:

BRIEF FOR APPELLANT

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Mail Stop Appeal Brief – Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

(i) *Real party in Interest.*

The present application is assigned to International Business Machines Corporation, a corporation organized and existing under the laws of the State of New York and having a place of business at Armonk, New York.

(ii) *Related appeals and interferences.*

The Appellant's legal representative, or assignee, does not know of any other appeal or interferences, which will affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

(iii) *Status of claims.*

Claims 1-23 and 47-64 are pending and on appeal in the application. The application was filed with 46 claims. Claims 24-46 were canceled from the application. Further, claims 1-23 were amended and claims 47-64 were added in the application. Pursuant to 37 C.F.R. § 1.191(a), Appellant hereby appeals the Examiner's decision finally rejecting claims 1-23 and 47-64 to the Board of Patent Appeals and Interferences.

(iv) *Status of amendments.*

A Final Office Action was issued on September 8, 2008, rejecting claims 1-23 and 47-64 under 35 U.S.C. § 102(b). A Notice of Appeal was filed on December 8, 2008. The fee of \$540.00 for filing this appeal brief is to be deducted from deposit account 09-0457 along with any other fees that may be

required, including any present or future extension of time fees, which Appellant hereby requests and authorizes, if necessary.

A clean copy of claims 1-23 and 47-64 at issue on appeal is attached as the Claims appendix.

(v) *Summary of claimed subject matter.*

The invention is summarized in the Summary section of the application on page 2, lines 20 through 28. The invention defined in the claims provides a computer-implemented method and computer program product for estimating a cost and a time requirement for migrating a computer-based application from a source platform to a target platform. Claim 1, the first independent claim, claims a computer-implemented method for estimating a cost for migrating a computer-based application from a source platform to a target platform; claim 13, the second independent claim, claims a computer-implemented method for estimating a time requirement for migrating a computer-based application from a source platform to a target platform; claim 47, the third independent claim, claims a computer program product for generating a cost assessment for migrating a computer-based application from a source platform to a target platform; and claim 56, the fourth independent claim, claims a computer program product for generating a time assessment for migrating a computer-based application from a source platform to a target platform. Claim 1 claims a computer-implemented method for estimating a cost for migrating a computer-based application from a source platform to a target platform, as

shown in FIGS. 1-3, 4A-4B, 5-8, 14-16 and 18. The method for estimating a cost for migrating a computer-based application from a source platform to a target platform includes receiving identifications of one or more migration tasks for migrating the computer-based application from the source platform to the target platform (page 5, lines 11-17 and lines 21-28, page 6, lines 5-17), receiving at least one assessment type selected for estimating a cost for migrating the computer-based application from the source platform to the target platform, where the at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type, and where the first assessment type delineates a degree of accuracy for estimating the cost that is greater than the second assessment type and where the second assessment type delineates a degree of accuracy for estimating the cost that is greater than the third assessment type (FIGS. 1-3, 14 and 16; page 4, lines 21-28, page 5, lines 5-17, page 10, lines 11-13, page 30, lines 6-8, page 51, lines 13-16 and lines 27-28, page 52, lines 18-22, page 56 lines 7-10 and page 76, lines 9-12), correlating base costs to the one or more migration tasks (FIGS. 1-3, 4A, 14 and 16; page 6, lines 11-17, page 10, lines 21-28, page 11, lines 5-15, page 27, lines 13-28, page 28, lines 5-14, page 29, lines 9-27, page 30, lines 9-28, page 31, lines 5-10, page 56, lines 18-28, page 57, lines 7-13), receiving identifications of migration attributes that affect the base costs (page 8, lines 10-27 and page 9, lines 5-28, page 27, lines 13-18, page 28, lines 5-14, page 29, lines 9-27, page 51, lines 13-16, lines 19-28, page 52, lines 5-28, page 53, lines 5-14, page 54, lines 9-27 and page 55, lines 5-16), correlating cost factors to the one or more migration tasks, each of the cost factors indicating an amount by which a migration attribute affects a base cost of

a migration task (FIGS. 1-3, 4A-4B and 5-8; page 11, lines 16-27, page 12, lines 5-28, page 13, lines 5-28, page 14, lines 5-27, page 15, lines 5-28, page 16, lines 5-27 and page 17, lines 5-22, page 31, lines 11-28, page 32, lines 5-27, page 33, lines 5-28, page 34, lines 5-27, page 35, lines 5-28, page 36, lines 5-28, page 37, lines 5-27, page 38, lines 5-28, page 55, lines 5-16, page 57, lines 13-28, page 58, lines 5-28, page 59, lines 5-28, page 60, lines 5-28, page 62, lines 5-28, page 63, lines 5-27, page 64, lines 5-28) and estimating the cost for each migration task, by applying the cost factors for each migration task to the base cost of each migration task (FIGS. 1, 3, 14 and 16; page 17, lines 23-28 and page 18, lines 5-14, page 39, lines 14-28, page 56, lines 11-28, page 57, lines 7-12 and page 65, lines 14-28). Claim 13 claims a computer-implemented method for estimating a time requirement for migrating a computer-based application from a source platform to a target platform, as shown in FIGS. 1-3, 9A-9B, 10-14, 17 and 19. The method for estimating a time requirement for migrating a computer-based application from a source platform to a target platform includes receiving identifications for respective migration tasks for migrating the computer-based application from the source platform to the target platform (page 5, lines 11-17 and lines 21-28, page 6, lines 5-17), receiving at least one assessment type selected for estimating a time requirement for migrating the computer-based application from the source platform to the target platform, where the at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type and where the first assessment type delineates a degree of accuracy for estimating the time requirement that is greater than the second assessment type and where the second

assessment type delineates a degree of accuracy for estimating the time requirement that is greater than the third assessment type (FIGS. 1-3, 14 and 16; page 4, lines 21-28, page 5, lines 5-17, page 10, lines 11-13, page 30, lines 6-8, page 51, lines 13-16 and lines 27-28, page 52, lines 18-22, page 56 lines 7-10 and page 76, lines 9-12), correlating base time requirements to the respective migration tasks (page 6, lines 11-28, page 18, lines 15-29, page 19, lines 5-16), receiving identifications of migration attributes that affect migration time, correlating time factors to the respective migration tasks, each time factor indicating an amount by which a migration attribute changes a base time requirement for a migration task (page 18, lines 15-29, page 19, lines 5-16, page 20, lines 5-28, page 21, lines 5-28, page 22, lines 5-28, page 23, lines 5-28, page 24, lines 5-28, page 25, lines 5-22) and estimating a time requirement for each migration task, by applying the time factors for the migration task to the base time requirement of the migration task (page 19, lines 16-28, page 20, lines 5-28, page 21, lines 5-28, page 22, lines 5-28, page 23, lines 5-28, page 24, lines 5-28, page 25, lines 5-28, page 26, lines 5-15, page 40, lines 5-26, page 41, lines 5-28, page 42, lines 5-27, page 43, lines 5-28, page 44, lines 5-27, page 45, lines 5-28, page 46, lines 5-28, page 47, lines 5-27, page 48, lines 5-28, page 49, lines 5-28, page 55, lines 23-26, page 66, lines 5-28, page 67, lines 5-28, page 68, lines 5-28, page 69, lines 5-28, page 70, lines 5-27, page 71, lines 5-28, page 72, lines 5-28, page 73, lines 5-27, page 74, lines 5-28 and page 75, lines 5-28). Claim 47 claims a computer program product for generating a cost assessment for migrating a computer-based application from a source platform to a target platform, as shown in FIGS. 1-3, 4A-4B, 5-8, 14-16 and 18. The computer program product is loaded on a computer system having a central

processing unit and includes a computer readable medium, first program instructions to receive, from a user, identifications for one or more migration tasks for migrating the computer-based application from the source platform to the target platform (page 5, lines 11-17 and lines 21-28, page 6, lines 5-17), second program instructions to receive at least one assessment type selected by the user for generating a cost assessment for migrating the computer-based application from the source platform to the target platform, where the at least one assessment type selected includes at least one of: a first assessment type, a second assessment type and a third assessment type and where the first assessment type delineates a degree of accuracy for generating the cost assessment that is greater than the second assessment type and where the second assessment type delineates a degree of accuracy for generating the cost assessment that is greater than the third assessment type (FIGS. 1-3, 14 and 16; page 4, lines 21-28, page 5, lines 5-17, page 10, lines 11-13, page 30, lines 6-8, page 51, lines 13-16 and lines 27-28, page 52, lines 18-22, page 56 lines 7-10 and page 76, lines 9-12), third program instructions to correlate base costs, received from the user, to the one or more migration tasks (FIGS. 1-3, 4A, 14 and 16; page 6, lines 11-17, page 10, lines 21-28, page 11, lines 5-15, page 27, lines 13-28, page 28, lines 5-14, page 29, lines 9-27, page 30, lines 9-28, page 31, lines 5-10, page 56, lines 18-28, page 57, lines 7-13), the third program instructions including instructions to receive, from the user, identifications of migration attributes that affect the base costs (page 8, lines 10-27 and page 9, lines 5-28, page 27, lines 13-18, page 28, lines 5-14, page 29, lines 9-27, page 51, lines 13-16, lines 19-28, page 52, lines 5-28, page 53, lines 5-14, page 54, lines 9-27 and page 55, lines 5-16), and including instructions to correlate cost factors,

received from the user, to the one or more migration tasks, each of the cost factors indicating an amount by which a migration attribute affects a base cost of a migration task, fourth program instructions to generate an individual cost assessment for each migration task (FIGS. 1, 3, 14 and 16; page 17, lines 23-28 and page 18, lines 5-14, page 39, lines 14-28, page 56, lines 11-28, page 57, lines 7-12 and page 65, lines 14-28), by applying the cost factors for each migration task to the base cost of each migration task (FIGS. 1-3, 4A-4B and 5-8; page 11, lines 16-27, page 12, lines 5-28, page 13, lines 5-28, page 14, lines 5-27, page 15, lines 5-28, page 16, lines 5-27 and page 17, lines 5-22, page 31, lines 11-28, page 32, lines 5-27, page 33, lines 5-28, page 34, lines 5-27, page 35, lines 5-28, page 36, lines 5-28, page 37, lines 5-27, page 38, lines 5-28, page 55, lines 5-16, page 57, lines 13-28, page 58, lines 5-28, page 59, lines 5-28, page 60, lines 5-28, page 62, lines 5-28, page 63, lines 5-27, page 64, lines 5-28) and where the first, second, third and fourth program instructions are recorded on the medium for execution by the central processing unit for displaying the individual cost assessment generated to the user. Claim 56 claims a computer program product for generating a time assessment for migrating a computer-based application from a source platform to a target platform, as shown in FIGS. 1-3, 9A-9B, 10-14, 17 and 19. The computer program product is loaded on a computer system having a central processing unit and includes a computer readable medium, first program instructions to receive, from a user, identifications for one or more migration tasks for migrating the computer-based application from the source platform to the target platform (page 5, lines 11-17 and lines 21-28, page 6, lines 5-17), second program instructions to receive at least one assessment type, selected by the user, for

generating a time assessment for migrating the computer-based application from the source platform to the target platform, where the at least one assessment type selected comprises at least one of: a first assessment type, a second assessment type and a third assessment type and where the first assessment type delineates a degree of accuracy for generating the time assessment that is greater than the second assessment type and where the second assessment type delineates a degree of accuracy for generating the time assessment that is greater than the third assessment type (FIGS. 1-3, 14 and 16; page 4, lines 21-28, page 5, lines 5-17, page 10, lines 11-13, page 30, lines 6-8, page 51, lines 13-16 and lines 27-28, page 52, lines 18-22, page 56 lines 7-10 and page 76, lines 9-12), third program instructions to correlate base time requirements, received from the user, to the one or more migration tasks (page 6, lines 11-28, page 18, lines 15-29, page 19, lines 15-16), the third program instructions including instructions to receive, from the user, identifications of migration attributes that affect the base time requirements and including instructions to correlate time factors, received from the user, to the one or more migration tasks, each of the time factors indicating an amount by which a migration attribute affects a base time requirement of a migration task (page 18, lines 15-29, page 19, lines 5-16, page 20, lines 5-28, page 21, lines 5-28, page 22, lines 5-28, page 23, lines 5-28, page 24, lines 5-28, page 25, lines 5-22), fourth program instructions to generate an individual time assessment for each migration task, by applying the time factors for each migration task to the base time requirement of each migration task (page 19, lines 16-28, page 20, lines 5-28, page 21, lines 5-28, page 22, lines 5-28, page 23, lines 5-28, page 24, lines 5-28, page 25, lines 5-28, page 26, lines 5-15, page 40, lines 5-26, page 41, lines 5-28, page

42, lines 5-27, page 43, lines 5-28, page 44, lines 5-27, page 45, lines 5-28, page 46, lines 5-28, page 47, lines 5-27, page 48, lines 5-28, page 49, lines 5-28, page 55, lines 23-26, page 66, lines 5-28, page 67, lines 5-28, page 68, lines 5-28, page 69, lines 5-28, page 70, lines 5-27, page 71, lines 5-28, page 72, lines 5-28, page 73, lines 5-27, page 74, lines 5-28 and page 75, lines 5-28) and where the first, second, third and fourth program instructions are recorded on the medium for execution by the central processing unit for displaying the individual time assessment generated to the user.

(vi) *Grounds of rejection to be reviewed on appeal.*

The issue presented on appeal are:

1. Whether claims 1-23 and 47-64 are properly rejected under 35 U.S.C. § 102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880).

(vii) *Argument.*

Rejection of claims 1-23 and 47-64 under 35 U.S.C. § 102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880)

Claims 1-23 and 47-64 were rejected under 35 U.S.C. § 102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880), paragraph 8 on page 4 of the Final

Office Action dated September 8, 2008. Appellant contends that the final rejection of claims 1-23 and 47-64 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) is improper in that Appellant's claims 1-23 and 47-64 are not anticipated by Strothmann (U.S. Patent 5,745,880). Appellant points out that it is well established that to anticipate under 35 U.S.C. §102, a single prior art reference must disclose all the elements and their claimed relationships. Unless a single prior art reference discloses all of the same claimed elements in exactly the same situation united in the same way to perform the same function, there can be no anticipation as a matter of law. Further, in *Net MoneyIN, Inc. v. VeriSign, Inc.*, No. 07-1565 (Fed. Cir. Oct. 20, 2008), the Federal Circuit stated that “[U]nless a single prior art reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U. S. C. §102.” *Id. at 17*. Appellant contends that although Strothmann (U.S. Patent 5,745,880) may contain some of the same terms used in Appellant's claims 1-23 and 47-64, Strothmann (U.S. Patent 5,745,880) does not disclose or suggest all of the same claimed elements in exactly the same situation united in the same way to perform the same function as claimed by Appellant, thus, there can be no anticipation under 35 U. S. C. §102(b) as a matter of law.

Improper Rejection of Claims 1-12 under 35 U.S.C. § 102(b):

Turning to Appellant's independent claim 1, Appellant contends that the final rejection of independent claim 1 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) is improper. The final rejection of record is improper in that Appellant's claim 1 is not anticipated by Strothmann (U.S. Patent 5,745,880). Appellant points out that it is well established that to anticipate under 35 U.S.C. §102, a single prior art reference must disclose all the elements and their claimed relationships. Unless a single prior art reference discloses all of the same claimed elements in exactly the same situation united in the same way to perform the same function, there can be no anticipation as a matter of law. Further, in *Net MoneyIN, Inc. v. VeriSign, Inc.*, No. 07-1565 (Fed. Cir. Oct. 20, 2008), the Federal Circuit stated that "[U]nless a single prior art reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U. S. C. §102." *Id. at 17*. Appellant contends that although Strothmann (U.S. Patent 5,745,880) may contain some of the same terms used in independent claim 1, Strothmann (U.S. Patent 5,745,880) does not disclose or suggest all of the same claimed elements in exactly the same situation united in the same way to perform the same function as claimed by Appellant, thus, there can be no anticipation under 35 U. S. C. §102(b) as a matter of law.

Turning to Appellant's independent claim 1, Appellant contends that Appellant's computer-implemented method claim 1 for estimating a cost for migrating a computer-based application from a source platform to a target platform, requires receiving identifications of one or more migration tasks for migrating the computer-based application from the source platform to the target platform, receiving at least one assessment type selected for estimating a cost for migrating the computer-based application from the source platform to the target platform, where the at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type and where the first assessment type delineates a degree of accuracy for estimating the cost that is greater than the second assessment type and where the second assessment type delineates a degree of accuracy for estimating the cost that is greater than the third assessment type, correlating base costs to the one or more migration tasks, receiving identifications of migration attributes that affect the base costs, correlating cost factors to the one or more migration tasks, each of the cost factors indicating an amount by which a migration attribute affects a base cost of a migration task and estimating the cost for each migration task, by applying the cost factors for each migration task to the base cost of each migration task. In particular, Appellant contends that Strothmann (U.S. Patent 5,745,880) fails to teach "receiving at least one assessment type selected for estimating a cost for migrating said computer-based application from said source platform to said target platform, wherein said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type and wherein said first assessment type

delineates a degree of accuracy for estimating said cost that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said cost that is greater than said third assessment type”. However, the Final Office Action states that TABLE C in Strothmann (U.S. Patent 5,745,880) discloses such by stating that “The training costs for the initial generic units will generally be higher than training costs for later units.”, and the Final Office Action further states that “In other words, the first assessment type is being greater in accuracy than the second assessment type and the second assessment type is being greater in accuracy than the third assessment type and so forth);” [page 5, lines 6-10 of the Final Office Action]. Appellant contends that the estimation of training costs disclosed in TABLE C does not amount to receiving an assessment type selected that delineates a degree of accuracy for estimating cost based on the type of assessment chosen. In particular, as pointed out in Appellant’s application, “The assessment template for a Type B assessment preferably comprises a representation of migration tasks, which is not as high-level as a Type C assessment template but not as detailed as a Type A assessment template.” [page 30, lines 6-8] In fact, the Strothmann (U.S. Patent 5,745,880) teaches away from the claimed subject matter in that it teaches predicting “the optimum computer platform for moving or migrating a single application function, for migrating all of the functions on the existing computer platform, for migrating a selected number of functions” [column 2, lines 43-47] and does not disclose receiving an assessment type selected to effectuate the degree of accuracy for estimating costs for migrating an application function. Accordingly, Appellant contends that Strothmann (U.S. Patent 5,745,880) does not teach

the claimed subject matter and instead teaches away from the claimed subject matter in that it teaches away from receiving an assessment type selected having a particular degree of accuracy for estimating costs of migrating a computer-based application from a source platform to a target platform. As such, Appellant contends that given that Strothmann (U.S. Patent 5,745,880) does not disclose the present independent claim 1 and teaches away from such, that the rejection of claim 1 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) should be reversed. Given that Strothmann (U.S. Patent 5,745,880) teaches “the optimum computer platform for moving or migrating a single application function, for migrating all of the functions on the existing computer platform, for migrating a selected number of functions” [column 2, lines 43-47 of Strothmann (U.S. Patent 5,745,880)] without receiving an assessment type selected to effectuate the degree of accuracy for estimating costs for migrating an application function as cited above, Strothmann (U.S. Patent 5,745,880) clearly does not disclose the claimed subject matter, which requires receiving an assessment type selected that delineates a degree of accuracy for estimating the cost for migrating a computer-based application. Additionally, Appellant contends that the rejection of dependent claims 2-12, which all depend directly or indirectly from independent claim 1, is improper for the same reasons discussed herein above with respect to claim 1, in that Strothmann (U.S. Patent 5,745,880) does not disclose the present independent claim 1 and instead teaches away from such, and thus, the rejection of claims 2-12 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) should be reversed.

Improper Rejection of Claims 1-12 based on a Misstatement of Fact:

Appellant further contends that the rejection of independent claim 1 under 35 U.S.C. § 102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) is based on a misstatement of fact. In particular, the Final Office Action states for the rejection of claim 1 that Strothmann (U.S. Patent 5,745,880) discloses “receiving at least one assessment type selected for estimating a cost for migrating said computer-based application from said source platform to said target platform, wherein said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type, and wherein said first assessment type delineates a degree of accuracy for estimating said cost that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said cost that is greater than said third assessment type (see at least TABLE C – ‘The training costs for the initial generic units will generally be higher than training costs for later units.’ In other words, the first assessment type is being greater in accuracy than the second assessment type and the second assessment type is being greater in accuracy than the third assessment type and so forth);” [page 4, paragraph No. 8, third line from the bottom and page 5, lines 1-10 of the Final Office Action]. Since a core foundation of the rejection of independent claim 1 is the statement in fact that Strothmann (U.S. Patent 5,745,880) discloses receiving at least one assessment type selected for estimating a cost for migrating a computer-based application from a source platform to a target platform, when in fact this is not true, and with such a faulty foundation based on

untruth and misstatement of fact, the rejection is inherently defective, improper and unsustainable. As noted above, this statement provided as fact in the Final Office Action regarding the disclosure by Strothmann (U.S. Patent 5,745,880) is not true, in that Strothmann (U.S. Patent 5,745,880) discloses “the optimum computer platform for moving or migrating a single application function, for migrating all of the functions on the existing computer platform, for migrating a selected number of functions” [column 2, lines 43-47 of Strothmann (U.S. Patent 5,745,880)] and does not disclose receiving an assessment type selected to effectuate the degree of accuracy for estimating costs for migrating an application function. With this Final Office Action rejection statement of fact being contrary to the teachings of Strothmann (U.S. Patent 5,745,880), the rejection cannot be maintained. Thus, the rejection of independent claim 1 is defective and improper and must be reversed since it is based on a misstatement of fact. Additionally, Appellant contends that the rejection of dependent claims 2-12, which all depend directly or indirectly from independent claim 1, is improper for the same reasons discussed herein above with respect to claim 1, in that the rejection is based on a misstatement of fact and must be reversed since it is based on a misstatement of fact.

Improper Rejection of Claims 13-23 under 35 U.S.C. § 102(b):

Turning to Appellant’s claims 13-23, Appellant contends that the final rejection of claims 13-23 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) is improper. The final rejection of record is improper in that Appellant’s

claims 13-23 are not anticipated by Strothmann (U.S. Patent 5,745,880). Appellant points out that it is well established that to anticipate under 35 U.S.C. §102, a single prior art reference must disclose all the elements and relationships of the claimed invention. Unless a single prior art reference discloses all of the same claimed elements in exactly the same situation united in the same way to perform the same function, there can be no anticipation as a matter of law. Further, in *Net MoneyIN, Inc. v. VeriSign, Inc.*, No. 07-1565 (Fed. Cir. Oct. 20, 2008), the Federal Circuit stated that “[U]nless a single prior art reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U. S. C. §102.” *Id. at 17*. Appellant contends that although Strothmann (U.S. Patent 5,745,880) may contain some of the same terms used in independent claim 13, Strothmann (U.S. Patent 5,745,880) does not disclose or suggest all of the same claimed elements in exactly the same situation united in the same way to perform the same function as claimed by Appellant, thus, there can be no anticipation under 35 U. S. C. §102(b) as a matter of law.

Turning to Appellant’s claims 13-23, Appellant contends that Appellant’s computer-implemented method as claimed in independent claim 13 for estimating a time requirement for migrating a computer-based application from a source platform to a target platform, requires receiving identifications for respective migration tasks for migrating the computer-based application from the source platform to the target platform, receiving at least one assessment type selected for estimating a time requirement for

migrating the computer-based application from the source platform to the target platform, where the at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type and where the first assessment type delineates a degree of accuracy for estimating the time requirement that is greater than the second assessment type and where the second assessment type delineates a degree of accuracy for estimating the time requirement that is greater than the third assessment type, correlating base time requirements to the respective migration tasks, receiving identifications of migration attributes that affect migration time, correlating time factors to the respective migration tasks, each time factor indicating an amount by which a migration attribute changes a base time requirement for a migration task and estimating a time requirement for each migration task, by applying the time factors for the migration task to the base time requirement of the migration task. In particular, Appellant contends that Strothmann (U.S. Patent 5,745,880) fails to teach “receiving at least one assessment type selected for estimating a time requirement for migrating said computer-based application from said source platform to said target platform, wherein said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type and wherein said first assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said third assessment type”. In particular, as pointed out in Appellant’s application, “The assessment template for a Type B assessment preferably comprises a

representation of migration tasks, which is not as high-level as a Type C assessment template but not as detailed as a Type A assessment template.” [page 30, lines 6-8] In fact, the Strothmann (U.S. Patent 5,745,880) teaches away from the claimed subject matter in that it teaches predicting “the optimum computer platform for moving or migrating a single application function, for migrating all of the functions on the existing computer platform, for migrating a selected number of functions” [column 2, lines 43-47] and does not disclose receiving an assessment type selected to effectuate the degree of accuracy for estimating time requirements for migrating an application function. Accordingly, Appellant contends that Strothmann (U.S. Patent 5,745,880) does not teach the claimed subject matter and instead teaches away from the claimed subject matter in that it teaches away from receiving an assessment type selected having a particular degree of accuracy for estimating time requirements of migrating a computer-based application from a source platform to a target platform. As such, Appellant contends that given that Strothmann (U.S. Patent 5,745,880) does not disclose the present independent claim 13 and teaches away from such, that the rejection of claim 13 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) should be reversed. Given that Strothmann (U.S. Patent 5,745,880) teaches “the optimum computer platform for moving or migrating a single application function, for migrating all of the functions on the existing computer platform, for migrating a selected number of functions” [column 2, lines 43-47 of Strothmann (U.S. Patent 5,745,880)] without receiving an assessment type selected to effectuate the degree of accuracy for estimating time requirements for migrating an application function as cited above, Strothmann (U.S. Patent 5,745,880)

clearly does not disclose the claimed subject matter, which requires receiving an assessment type selected that delineates a degree of accuracy for estimating the time requirements for migrating a computer-based application. Additionally, Appellant contends that the rejection of dependent claims 14-23, which all depend directly or indirectly from independent claim 13, is improper for the same reasons discussed herein above with respect to claim 13, in that Strothmann (U.S. Patent 5,745,880) does not disclose the present independent claim 13 and instead teaches away from such, and thus the rejection of claims 14-23 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) should be reversed.

Improper Rejection of Claims 13-23 based on a Misstatement of Fact:

Appellant further contends that the rejection of independent claim 13 under 35 U.S.C. § 102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) is based on a misstatement of fact. In particular, the Final Office Action states for the rejection of claim 13 that Strothmann (U.S. Patent 5,745,880) discloses “receiving at least one assessment type selected for estimating a time requirement for migrating said computer-based application from said source platform to said target platform, where said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type, and where said first assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said second assessment type and where said second assessment type delineates a degree

of accuracy for estimating said time requirement that is greater than said third assessment type.” [page 10 of the Final Office Action] Since a core foundation of the rejection of independent claim 13 is the statement in fact that Strothmann (U.S. Patent 5,745,880) discloses receiving at least one assessment type selected for estimating a time requirement for migrating a computer-based application from a source platform to a target platform, when in fact this is not true, and with such a faulty foundation based on untruth and misstatement of fact, the rejection is inherently defective, improper and unsustainable. As noted above, this statement provided as fact in the Final Office Action regarding the disclosure by Strothmann (U.S. Patent 5,745,880) is not true, in that Strothmann (U.S. Patent 5,745,880) discloses “the optimum computer platform for moving or migrating a single application function, for migrating all of the functions on the existing computer platform, for migrating a selected number of functions” [column 2, lines 43-47 of Strothmann (U.S. Patent 5,745,880)] and does not disclose receiving an assessment type selected to effectuate the degree of accuracy for estimating time requirements for migrating an application function. With this Final Office Action rejection statement of fact being contrary to the teachings of Strothmann (U.S. Patent 5,745,880), the rejection cannot be maintained. Thus, the rejection of independent claim 13 is defective and improper and must be reversed since it is based on a misstatement of fact. Additionally, Appellant contends that the rejection of dependent claims 14-23, which all depend directly or indirectly from independent claim 13, is improper for the same reasons discussed herein above with respect to claim 13, in that the rejection is

based on a misstatement of fact and must be reversed since it is based on a misstatement of fact.

Improper Rejection of Claims 47-55 under 35 U.S.C. § 102(b):

Turning to Appellant's claims 47-55, Appellant contends that the final rejection of claims 47-55 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) is improper. The final rejection of record is improper in that Appellant's claims 47-55 are not anticipated by Strothmann (U.S. Patent 5,745,880). Appellant points out that it is well established that to anticipate under 35 U.S.C. §102, a single prior art reference must disclose all the elements and relationships of the claimed invention. Unless a single prior art reference discloses all of the same claimed elements in exactly the same situation united in the same way to perform the same function, there can be no anticipation as a matter of law. Further, in *Net MoneyIN, Inc. v. VeriSign, Inc.*, No. 07-1565 (Fed. Cir. Oct. 20, 2008), the Federal Circuit stated that "[U]nless a single prior art reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U. S. C. §102." *Id. at 17*. Appellant contends that although Strothmann (U.S. Patent 5,745,880) may contain some of the same terms used in independent claim 47, Strothmann (U.S. Patent 5,745,880) does not disclose or suggest all of the same claimed elements in exactly the same situation united in the same way to

perform the same function as claimed by Appellant, thus, there can be no anticipation under 35 U. S. C. §102(b) as a matter of law.

Turning to Appellant's claims 47-55, Appellant contends that Appellant's independent claim 47 claims a computer program product for generating a cost assessment for migrating a computer-based application from a source platform to a target platform, where the computer program product is loaded on a computer system having a central processing unit and which includes a computer readable medium, first program instructions to receive, from a user, identifications for one or more migration tasks for migrating the computer-based application from the source platform to the target platform, second program instructions to receive at least one assessment type selected by the user for generating a cost assessment for migrating the computer-based application from the source platform to the target platform, where the at least one assessment type selected comprises at least one of: a first assessment type, a second assessment type and a third assessment type and where the first assessment type delineates a degree of accuracy for generating the cost assessment that is greater than the second assessment type and where the second assessment type delineates a degree of accuracy for generating the cost assessment that is greater than the third assessment type, third program instructions to correlate base costs, received from the user, to the one or more migration tasks, the third program instructions including instructions to receive, from the user, identifications of migration attributes that affect the base costs and including instructions to correlate cost factors, received from the user, to the one or more migration tasks, each of the cost factors indicating an amount by which a migration attribute affects a base cost of a

migration task, fourth program instructions to generate an individual cost assessment for each migration task, by applying the cost factors for each migration task to the base cost of each migration task and where the first, second, third and fourth program instructions are recorded on the medium for execution by the central processing unit for displaying the individual cost assessment generated to the user.

Turning to Appellant's independent claim 47, Appellant contends that Appellant's computer program product claim 47 for generating a cost assessment for migrating a computer-based application from a source platform to a target platform, requires first program instructions to receive identifications of one or more migration tasks for migrating the computer-based application from the source platform to the target platform, second program instructions to receive at least one assessment type selected by a user for generating a cost assessment for migrating the computer-based application from the source platform to the target platform, where the at least one assessment type selected comprises at least one of: a first assessment type, a second assessment type and a third assessment type and where the first assessment type delineates a degree of accuracy for generating the cost assessment that is greater than the second assessment type and where the second assessment type delineates a degree of accuracy for generating the cost assessment that is greater than the third assessment type, third program instructions to correlate base costs, received from the user, to the one or more migration tasks, the third program instructions including instructions to receive, from the user, identifications of migration attributes that affect the base costs and including instructions to correlate cost factors, received from the user, to the one or more migration tasks, each of the cost

factors indicating an amount by which a migration attribute affects a base cost of a migration task, and fourth program instructions to generate an individual cost assessment for each migration task, by applying the cost factors for each migration task to the base cost of each migration task, where the first, second, third and fourth program instructions are recorded on the medium for execution by the central processing unit for displaying the individual cost assessment generated to the user. In particular, Appellant contends that Strothmann (U.S. Patent 5,745,880) fails to teach program instructions “to receive at least one assessment type selected for estimating a cost for migrating said computer-based application from said source platform to said target platform, wherein said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type and wherein said first assessment type delineates a degree of accuracy for estimating said cost that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said cost that is greater than said third assessment type”. In particular, as pointed out in Appellant’s application, “The assessment template for a Type B assessment preferably comprises a representation of migration tasks, which is not as high-level as a Type C assessment template but not as detailed as a Type A assessment template.” [page 30, lines 6-8] In fact, Strothmann (U.S. Patent 5,745,880) teaches away from the claimed subject matter in that it teaches predicting “the optimum computer platform for moving or migrating a single application function, for migrating all of the functions on the existing computer platform, for migrating a selected number of functions” [column 2, lines 43-47] and does not disclose instruction to receive at least

one assessment type selected to effectuate the degree of accuracy for generating a cost assessment for migrating a computer-based application. Accordingly, Appellant contends that Strothmann (U.S. Patent 5,745,880) does not teach the claimed subject matter and instead teaches away from the claimed subject matter in that it teaches away from receiving an assessment type selected having a particular degree of accuracy for generating a cost assessment for migrating a computer-based application from a source platform to a target platform. As such, Appellant contends that given that Strothmann (U.S. Patent 5,745,880) does not disclose the present independent claim 47 and teaches away from such, that the rejection of claim 47 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) should be reversed. Given that Strothmann (U.S. Patent 5,745,880) teaches “the optimum computer platform for moving or migrating a single application function, for migrating all of the functions on the existing computer platform, for migrating a selected number of functions” [column 2, lines 43-47 of Strothmann (U.S. Patent 5,745,880)] without disclosing receiving an assessment type selected to effectuate the degree of accuracy for generating a cost assessment for migrating an application function as cited above, Strothmann (U.S. Patent 5,745,880) clearly does not disclose the claimed subject matter, which requires receiving an assessment type selected that delineates a degree of accuracy for generating a cost assessment for migrating a computer-based application. Additionally, Appellant contends that the rejection of dependent claims 48-55, which all depend directly or indirectly from independent claim 47, is improper for the same reasons discussed herein above with respect to claim 47, in that Strothmann (U.S. Patent 5,745,880) does not

disclose the present independent claim 47 and instead teaches away from such, and thus the rejection of claims 48-55 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) should be reversed.

Improper Rejection of Claims 47-55 based on a Misstatement of Fact:

Appellant further contends that the rejection of independent claim 47-55 under 35 U.S.C. § 102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) is based on a misstatement of fact. In particular, the Final Office Action states for the rejection of claim 47 (on page 4 of the Final Office Action) that Strothmann (U.S. Patent 5,745,880) discloses “receiving at least one assessment type selected for estimating a cost for migrating said computer-based application from said source platform to said target platform, wherein said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type, and wherein said first assessment type delineates a degree of accuracy for estimating said cost that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said cost that is greater than said third assessment type (see at least TABLE C – ‘The training costs for the initial generic units will generally be higher than training costs for later units.’ In other words, the first assessment type is being greater in accuracy than the second assessment type and the second assessment type is being greater in accuracy than the third assessment type and so forth);” [page 4, paragraph No. 8, third line from the bottom and page 5, lines 1-10 of the

Final Office Action]. Since a core foundation of the rejection of independent claim 47 is the statement in fact that Strothmann (U.S. Patent 5,745,880) discloses receiving at least one assessment type selected for estimating a cost for migrating a computer-based application from a source platform to a target platform, when in fact this is not true, and with such a faulty foundation based on untruth and misstatement of fact, the rejection is inherently defective, improper and unsustainable. As noted above, this statement provided as fact in the Final Office Action regarding the disclosure by Strothmann (U.S. Patent 5,745,880) is not true, in that Strothmann (U.S. Patent 5,745,880) discloses “the optimum computer platform for moving or migrating a single application function, for migrating all of the functions on the existing computer platform, for migrating a selected number of functions” [column 2, lines 43-47 of Strothmann (U.S. Patent 5,745,880)] and does not disclose receiving an assessment type selected to effectuate the degree of accuracy for generating a cost assessment for migrating an application function. With this Final Office Action rejection statement of fact being contrary to the teachings of Strothmann (U.S. Patent 5,745,880), the rejection cannot be maintained. Thus, the rejection of independent claim 47 is defective and improper and must be reversed since it is based on a misstatement of fact. Additionally, Appellant contends that the rejection of dependent claims 48-55, which all depend directly or indirectly from independent claim 47, is improper for the same reasons discussed herein above with respect to claim 47, in that the rejection is based on a misstatement of fact and must be reversed since it is based on a misstatement of fact.

Improper Rejection of Claims 56-64 under 35 U.S.C. § 102(b):

Turning to Appellant's claims 56-64, Appellant contends that the final rejection of claims 56-64 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) is improper. The final rejection of record is improper in that Appellant's claims 56-64 are not anticipated by Strothmann (U.S. Patent 5,745,880). Appellant points out that it is well established that to anticipate under 35 U.S.C. §102, a single prior art reference must disclose all the elements and relationships of the claimed invention. Unless a single prior art reference discloses all of the same claimed elements in exactly the same situation united in the same way to perform the same function, there can be no anticipation as a matter of law. Further, in *Net MoneyIN, Inc. v. VeriSign, Inc.*, No. 07-1565 (Fed. Cir. Oct. 20, 2008), the Federal Circuit stated that "[U]nless a single prior art reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U. S. C. §102." *Id. at 17*. Appellant contends that although Strothmann (U.S. Patent 5,745,880) may contain some of the same terms used in claims 56-64, Strothmann (U.S. Patent 5,745,880) does not disclose or suggest all of the same claimed elements in exactly the same situation united in the same way to perform the same function as claimed by Appellant, thus, there can be no anticipation under 35 U. S. C. §102(b) as a matter of law.

Turning to Appellant's claims 56-64, Appellant contends that Appellant's independent claim 56 claims a computer program product for generating a time assessment for migrating a computer-based application from a source platform to a target platform, where the computer program product is loaded on a computer system having a central processing unit and includes a computer readable medium, first program instructions to receive, from a user, identifications for one or more migration tasks for migrating the computer-based application from the source platform to the target platform, second program instructions to receive at least one assessment type, selected by the user, for generating a time assessment for migrating the computer-based application from the source platform to the target platform, where the at least one assessment type selected comprises at least one of: a first assessment type, a second assessment type and a third assessment type and where the first assessment type delineates a degree of accuracy for generating the time assessment that is greater than the second assessment type and where the second assessment type delineates a degree of accuracy for generating the time assessment that is greater than the third assessment type, third program instructions to correlate base time requirements, received from the user, to the one or more migration tasks, the third program instructions including instructions to receive, from the user, identifications of migration attributes that affect the base time requirements and including instructions to correlate time factors, received from the user, to the one or more migration tasks, each of the time factors indicating an amount by which a migration attribute affects a base time requirement of a migration task, fourth program instructions to generate an individual time assessment for each migration task, by applying the time factors for each

migration task to the base time requirement of each migration task and where the first, second, third and fourth program instructions are recorded on the medium for execution by the central processing unit for displaying the individual time assessment generated to the user.

In particular, Appellant contends that Strothmann (U.S. Patent 5,745,880) fails to teach instructions to “receive at least one assessment type selected for generating a time assessment for migrating said computer-based application from said source platform to said target platform, wherein said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type and wherein said first assessment type delineates a degree of accuracy for estimating said cost that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for generating said time assessment that is greater than said third assessment type”. In particular, as pointed out in Appellant’s application, “The assessment template for a Type B assessment preferably comprises a representation of migration tasks, which is not as high-level as a Type C assessment template but not as detailed as a Type A assessment template.” [page 30, lines 6-8] In fact, Strothmann (U.S. Patent 5,745,880) teaches away from the claimed subject matter in that it teaches predicting “the optimum computer platform for moving or migrating a single application function, for migrating all of the functions on the existing computer platform, for migrating a selected number of functions” [column 2, lines 43-47] and does not disclose receiving an assessment type selected to effectuate the degree of accuracy for generating a time assessment for migrating an application function. Accordingly, Appellant

contends that Strothmann (U.S. Patent 5,745,880) does not teach the claimed subject matter and instead teaches away from the claimed subject matter in that it teaches away from receiving an assessment type selected having a particular degree of accuracy for generating a time assessment for migrating a computer-based application from a source platform to a target platform. As such, Appellant contends that given that Strothmann (U.S. Patent 5,745,880) does not disclose the present independent claim 56 and teaches away from such, that the rejection of claim 56 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) should be reversed. Given that Strothmann (U.S. Patent 5,745,880) teaches “the optimum computer platform for moving or migrating a single application function, for migrating all of the functions on the existing computer platform, for migrating a selected number of functions” [column 2, lines 43-47 of Strothmann (U.S. Patent 5,745,880)] without disclosing receiving an assessment type selected to effectuate the degree of accuracy for generating a time assessment for migrating an application function as cited above, Strothmann (U.S. Patent 5,745,880) clearly does not disclose the claimed subject matter, which requires receiving an assessment type selected that delineates a degree of accuracy for generating a time assessment for migrating a computer-based application. Additionally, Appellant contends that the rejection of dependent claims 57-64, which all depend directly or indirectly from independent claim 56, is improper for the same reasons discussed herein above with respect to claim 56, in that Strothmann (U.S. Patent 5,745,880) does not disclose the present independent claim 56 and instead teaches away from such, and thus

the rejection of claims 57-64 under 35 U. S. C. §102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) should be reversed.

Improper Rejection of Claims 56-64 based on a Misstatement of Fact:

Appellant further contends that the rejection of independent claim 56 under 35 U.S.C. § 102(b) as being anticipated by Strothmann (U.S. Patent 5,745,880) is based on a misstatement of fact. In particular, the Final Office Action states for the rejection of claim 56 that Strothmann (U.S. Patent 5,745,880) discloses “receiving at least one assessment type selected for estimating a time requirement for migrating said computer-based application from said source platform to said target platform, where said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type, and where said first assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said second assessment type and where said second assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said third assessment type.” [page 10 of the Final Office Action] Since a core foundation of the rejection of independent claim 56 is the statement in fact that Strothmann (U.S. Patent 5,745,880) discloses receiving at least one assessment type selected for estimating a time requirement for migrating a computer-based application from a source platform to a target platform, when in fact this is not true, and with such a faulty foundation based on untruth and misstatement of fact, the rejection is inherently defective, improper and

unsustainable. As noted above, this statement provided as fact in the Final Office Action regarding the disclosure by Strothmann (U.S. Patent 5,745,880) is not true, in that Strothmann (U.S. Patent 5,745,880) discloses “the optimum computer platform for moving or migrating a single application function, for migrating all of the functions on the existing computer platform, for migrating a selected number of functions” [column 2, lines 43-47 of Strothmann (U.S. Patent 5,745,880)] and does not disclose receiving an assessment type selected to effectuate the degree of accuracy for estimating time requirements for migrating an application function. With this Final Office Action rejection statement of fact being contrary to the teachings of Strothmann (U.S. Patent 5,745,880), the rejection cannot be maintained. Thus, the rejection of independent claim 56 is defective and improper and must be reversed since it is based on a misstatement of fact. Additionally, Appellant contends that the rejection of dependent claims 57-64, which all depend directly or indirectly from independent claim 56, is improper for the same reasons discussed herein above with respect to claim 56, in that the rejection is based on a misstatement of fact and must be reversed since it is based on a misstatement of fact.

For the reasons set forth above, it is respectfully submitted that the rejections of claims 1-23 and 47-64 are improper and should be reversed.

(viii) *Claims Appendix.*

1. A computer-implemented method for estimating a cost for migrating a computer-based application from a source platform to a target platform, said method comprising the steps of:

receiving identifications of one or more migration tasks for migrating said computer-based application from said source platform to said target platform;

receiving at least one assessment type selected for estimating a cost for migrating said computer-based application from said source platform to said target platform, wherein said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type, and wherein said first assessment type delineates a degree of accuracy for estimating said cost that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said cost that is greater than said third assessment type;

correlating base costs to said one or more migration tasks;

receiving identifications of migration attributes that affect said base costs;

correlating cost factors to said one or more migration tasks, each of said cost factors indicating an amount by which a migration attribute affects a base cost of a migration task; and

estimating said cost for each migration task, by applying said cost factors for said each migration task to said base cost of said each migration task.

2. The method of claim 1, wherein said one or more migration tasks comprise at least one of: system building, project management, ramp up, baseline testing, migration, system testing, delivery, acceptance testing, sign-off, exporting data, importing data, redirecting user terminals, replacing third party products and deployment.
3. The method of claim 1, wherein said migration attributes comprise at least one of: hardware attributes, operating system attributes, application attributes, environment attributes, source code attributes, complexity attributes and testing attributes.
4. The method of claim 3, wherein said source code attributes comprise at least one code metric chosen from a group consisting of: number of code lines, number of code modules, number of files, call types, number of calls, data volume, structural integrity, use of lexical functions and operating system dependence.
5. The method of claim 1, further comprising the step of:
estimating a total cost for said one or more migration tasks, by summing said cost estimated for said each migration task; and displaying a migration assessment comprising said total cost.
6. The method of claim 5, wherein said migration assessment further comprises said cost estimated for said each migration task.

7. The method of claim 5, further comprising the step of:

applying tolerances to one or more of said cost estimated for said each migration task and said total cost estimated for said one or more migration tasks, wherein one or more of said cost estimated for said each migration task and said total cost estimated for said one or more migration tasks comprises a cost range.
8. The method of claim 1, wherein one or more of said base costs are received from a user.
9. The method of claim 1, wherein one or more of said cost factors are received from a user.
10. The method of claim 1, wherein said degree of accuracy for estimating said cost for said migration comprises a degree of accuracy for said cost estimated for said each migration task and said total cost estimated for said one or more migration tasks.
11. The method of claim 5, further comprising the step of:

creating an assessment template based on said at least one assessment type selected, said assessment template comprising a format for said migration assessment.
12. The method of claim 1, further comprising the steps of:

correlating base time requirements to said one or more migration tasks;

correlating time factors to said one or more migration tasks, each time factor indicating an amount by which a migration attribute changes a base time requirement for a migration task; and

estimating a time requirement for said each migration task, by applying said time factors for said migration task to said base time requirement for said migration task.

13. A computer-implemented method for estimating a time requirement for migrating a computer-based application from a source platform to a target platform, comprising the steps of:

receiving identifications for respective migration tasks for migrating said computer-based application from said source platform to said target platform;

receiving at least one assessment type selected for estimating a time requirement for migrating said computer-based application from said source platform to said target platform, wherein said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type, and wherein said first assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said third assessment type;

correlating base time requirements to said respective migration tasks;

receiving identifications of migration attributes that affect migration time;

correlating time factors to said respective migration tasks, each time factor indicating an amount by which a migration attribute changes a base time requirement for a migration task; and

estimating a time requirement for each migration task, by applying said time factors for said migration task to said base time requirement of said migration task.

14. The method of claim 13, wherein said one or more migration tasks comprise at least one of: system building, project management, ramp up, baseline testing, migration, system testing, delivery, acceptance testing, sign-off, exporting data, importing data, redirecting user terminals, replacing third party products and deployment.

15. The method of claim 13, wherein said migration attributes comprise at least one of: hardware attributes, operating system attributes, application attributes, environment attributes, source code attributes, complexity attributes and testing attributes.

16. The method of claim 15, wherein said source code attributes comprise at least one code metric chosen from a group consisting of: number of code lines, number of code modules, number of files, call types, number of calls, data volume, structural integrity, use of lexical functions and operating system dependence.

17. The method of claim 13, further comprising the step of:

estimating a total time requirement for said one or more migration tasks, by
summing said time requirement estimated for said each migration task; and
displaying a migration assessment comprising said total time requirement.

18. The method of claim 17, wherein said migration assessment displayed further
comprises said time requirement estimated for said each migration task.

19. The method of claim 17, further comprising the step of:
applying tolerances to one or more of said time requirement estimated for said
each migration task and said total time requirement estimated for said one or more
migration tasks, wherein one or more of said time requirement estimated for said each
migration task and said total time requirement estimated for said one or more migration
tasks comprises a time range.

20. The method of claim 13, wherein one or more of said base time requirements are
received from a user.

21. The method of claim 13, wherein one or more of said time factors are received
from a user.

22. The method of claim 13, wherein said degree of accuracy for estimating said time
requirement for said migration comprises a degree of accuracy for said time requirement

estimated for said each migration task and said total time requirement estimated for said one or more migration tasks.

23. The method of claim 18, further comprising the step of:
creating an assessment template based on said at least one assessment type selected, said assessment template comprising a format for said migration assessment displayed.

24. (Canceled)

25. (Canceled)

26. (Canceled)

27. (Canceled)

28. (Canceled)

29. (Canceled)

30. (Canceled)

31. (Canceled)

32. (Canceled)

33. (Canceled)

34. (Canceled)

35. (Canceled)

36. (Canceled)

37. (Canceled)

38. (Canceled)

39. (Canceled)

40. (Canceled)

41. (Canceled)

42. (Canceled)

43. (Canceled)

44. (Canceled)

45. (Canceled)

46. (Canceled)

47. A computer program product for generating a cost assessment for migrating a computer-based application from a source platform to a target platform, said computer program product being loaded on a computer system having a central processing unit and comprising:

a computer readable medium;

first program instructions to receive, from a user, identifications for one or more migration tasks for migrating said computer-based application from said source platform to said target platform;

second program instructions to receive at least one assessment type selected by said user for generating a cost assessment for migrating said computer-based application from said source platform to said target platform, wherein said at least one assessment type selected comprises at least one of: a first assessment type, a second assessment type

and a third assessment type, and wherein said first assessment type delineates a degree of accuracy for generating said cost assessment that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for generating said cost assessment that is greater than said third assessment type;

third program instructions to correlate base costs, received from said user, to said one or more migration tasks, said third program instructions including instructions to receive, from said user, identifications of migration attributes that affect said base costs and including instructions to correlate cost factors, received from said user, to said one or more migration tasks, each of said cost factors indicating an amount by which a migration attribute affects a base cost of a migration task;

fourth program instructions to generate an individual cost assessment for each migration task, by applying said cost factors for said each migration task to said base cost of said each migration task, and wherein said first, second, third and fourth program instructions are recorded on said medium for execution by said central processing unit for displaying said individual cost assessment generated to said user.

48. A computer program product as set forth in claim 47, wherein said second program instructions further include instructions to create an assessment template based on said at least one assessment type selected, said assessment template comprising a format for generating said cost assessment for migrating said computer-based application from said source platform to said target platform.

49. A computer program product as set forth in claim 48, wherein said fourth program instructions further include instructions to generate a total cost assessment for said one or more migration tasks, by summing said individual cost assessment generated for said each migration task, said fourth program instructions including instructions to display to said user said cost assessment generated comprising said individual cost assessment generated for said each migration task and said total cost assessment generated for said one or more migration tasks.

50. A computer program product as set forth in claim 49, wherein said fourth program instructions further include instructions to apply tolerances to one or more of said individual cost assessment generated for said each migration task and said total cost assessment generated for said one or more migration tasks, wherein one or more of said individual cost assessment generated for said each migration task and said total cost assessment generated for said one or more migration tasks comprises a cost range.

51. A computer program product as set forth in claim 50, wherein said third program instructions further include instructions to correlate base time requirements, received from said user, to said one or more migration tasks and to correlate time factors, received from said user, to said one or more migration tasks, each time factor indicating an amount by which a migration attribute changes a base time requirement for a migration task and wherein said fourth program instructions include instructions to display to said user a time assessment generated, said time requirement comprising an individual time

requirement assessment generated for said each migration task, by applying said time factors for said each migration task to said base time requirement for said each migration task and a total time requirement assessment generated for said one or more migration tasks.

52. A computer program product as set forth in claim 51, wherein said one or more migration tasks comprise at least one of: system building, project management, ramp up, baseline testing, migration, system testing, delivery, acceptance testing, sign-off, exporting data, importing data, redirecting user terminals, replacing third party products and deployment.

53. A computer program product as set forth in claim 52, wherein said migration attributes comprise at least one of: hardware attributes, operating system attributes, application attributes, environment attributes, source code attributes, complexity attributes and testing attributes.

54. A computer program product as set forth in claim 53, wherein said source code attributes comprise at least one code metric chosen from a group consisting of: number of code lines, number of code modules, number of files, call types, number of calls, data volume, structural integrity, use of lexical functions and operating system dependence.

55. A computer program product as set forth in claim 54, wherein said first assessment type delineates a degree of accuracy for generating said time assessment that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for generating said time assessment that is greater than said third assessment type.

56. A computer program product for generating a time assessment for migrating a computer-based application from a source platform to a target platform, said computer program product being loaded on a computer system having a central processing unit and comprising:

a computer readable medium;

first program instructions to receive, from a user, identifications for one or more migration tasks for migrating said computer-based application from said source platform to said target platform;

second program instructions to receive at least one assessment type, selected by said user, for generating a time assessment for migrating said computer-based application from said source platform to said target platform, wherein said at least one assessment type selected comprises at least one of: a first assessment type, a second assessment type and a third assessment type, and wherein said first assessment type delineates a degree of accuracy for generating said time assessment that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for generating said time assessment that is greater than said third assessment type;

third program instructions to correlate base time requirements, received from said user, to said one or more migration tasks, said third program instructions including instructions to receive, from said user, identifications of migration attributes that affect said base time requirements and including instructions to correlate time factors, received from said user, to said one or more migration tasks, each of said time factors indicating an amount by which a migration attribute affects a base time requirement of a migration task;

fourth program instructions to generate an individual time assessment for each migration task, by applying said time factors for said each migration task to said base time requirement of said each migration task, and wherein said first, second, third and fourth program instructions are recorded on said medium for execution by said central processing unit for displaying said individual time assessment generated to said user.

57. A computer program product as set forth in claim 56, wherein said second program instructions further include instructions to create an assessment template based on said at least one assessment type selected, said assessment template comprising a format for generating said time assessment for migrating said computer-based application from said source platform to said target platform.

58. A computer program product as set forth in claim 57, wherein said fourth program instructions further include instructions to generate a total time assessment for said one or more migration tasks, by summing said individual time assessment generated for said

each migration task, said fourth program instructions including instructions to display to said user said time assessment generated comprising said individual time assessment generated for said each migration task and said total time assessment generated for said one or more migration tasks.

59. A computer program product as set forth in claim 58, wherein said fourth program instructions further include instructions to apply tolerances to one or more of said individual time assessment generated for said each migration task and said total time assessment generated for said one or more migration tasks, wherein one or more of said individual time assessment generated for said each migration task and said total time assessment generated for said one or more migration tasks comprises a time range.

60. A computer program product as set forth in claim 59, wherein said third program instructions further include instructions to correlate base costs received, from said user, to said one or more migration tasks and to correlate cost factors, received from said user, to said one or more migration tasks, each cost factor indicating an amount by which a migration attribute changes a base cost for a migration task and wherein said fourth program instructions including instructions to display to said user a cost assessment generated comprising an individual cost assessment generated for said each migration task, by applying said cost factors for said each migration task to said base cost for said each migration task and a total cost assessment generated for said one or more migration

tasks.

61. A computer program product as set forth in claim 60, wherein said one or more migration tasks comprise at least one of: system building, project management, ramp up, baseline testing, migration, system testing, delivery, acceptance testing, sign-off, exporting data, importing data, redirecting user terminals, replacing third party products and deployment.

62. A computer program product as set forth in claim 61, wherein said migration attributes comprise at least one of: hardware attributes, operating system attributes, application attributes, environment attributes, source code attributes, complexity attributes and testing attributes.

63. A computer program product as set forth in claim 62, wherein said source code attributes comprise at least one code metric chosen from a group consisting of: number of code lines, number of code modules, number of files, call types, number of calls, data volume, structural integrity, use of lexical functions and operating system dependence.

64. A computer program product as set forth in claim 63, wherein said first assessment type delineates a degree of accuracy for generating said cost assessment that is greater than said second assessment type and wherein said second assessment type

delineates a degree of accuracy for generating said cost assessment that is greater than said third assessment type.

(ix) *Evidence appendix.*

None

(x) *Related proceedings appendix.*

None

The Commissioner is hereby authorized to charge \$540.00 for payment of the Appeal Brief fee to Deposit Account No. 09-0457. The Commissioner is hereby authorized to charge any additional fees or credit any overpayments regarding this correspondence to Deposit Account No. 09-0457.

Respectfully submitted,

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